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REPORT NO. 2

TO: THE LEGISLATIVE COUNCIL OF MARYLAND

SUBJECT: NATURAL RESOURCES ARTICLE

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I. BACKGROUND.

In the fall of 1971 this Commission distributed to all members of the General Assembly our Revisor's Manual, explaining the Commission's functions, its methods of operation, and its general plan for code revision. That plan contemplated the arrangement of the public general laws into approximately 20 major articles. It also contemplated the submission of the first of these articles, the Natural Resources Article, to the 1972 General Assembly.

Because of the bulk of the material involved, it proved impossible to complete this task by early 1972. Instead, on March 3, 1972, we submitted our Report No. 1 to the General Assembly. This covered District Court housekeeping legislation and was accompanied by a bill which was duly enacted and is now Chapter 181, Laws of 1972.

In Report No. 1, we stated that we intended to submit the proposed Natural Resources Article to the Legislative Council later in the year. We now present the first installment of that

Article. Attached to this Report are an outline of the entire Article and drafts of Titles 1, 5, 6, and 7. The remaining six titles will be submitted to the Council during July, 1972.

II. OVERVIEW OF THE NATURAL RESOURCES ARTICLE.

The Natural Resources Article must be considered in the context of the general scope of the code revision project. This project involves a major reorganization of the public general laws and their regrouping into a small number of large articles. The essential purpose of this process is to permit logically-related statutes to be placed in close proximity, instead of scattering them throughout the Code as is the case under the present essentially alphabetical organization of articles. This type of arrangement facilitates the administration of an agency such as the Department of Natural Resources, and also makes the laws easier for the lawyer or the layman to find and to use.

A second part of the revision process is the improvement and clarification of language, intended to make the laws easier to understand. Part of this process involves the elimination of legalisms and the substitution of contemporary English for archaic language.

Finally, the revision process includes the elimination of obsolete or impliedly-repealed statutes, or those held unconstitutional by the courts.

We emphasize that the basic process of code revision has to do with formal and not substantive change. In a few instances, the Commission has proposed what might be considered changes of substance.

In every case in which this has been done, the Revisor's Note appended to the section explains the reason. Proposals of this sort are also noted in subsequent sections of this Report.

As originally visualized, the Natural Resources Article would have included the following titles:

Title 1 - Department of Natural Resources

Title 2 - Agriculture

Title 3 - Environmental Services

Title 4 - Fish and Wildlife

Title 5 - Forests and Parks

Title 6 - Gas and Oil

Title 7 - Mines and Mining

Title 8 - Water and Water Resources

Title 9 - Miscellaneous

The provisions of these titles would have replaced present Article 14B (State Boat Act); Article 33B (Environmental Services); Article 66C (Natural Resources); and Article 96A (Water Resources); and parts of present Articles 41 (Governor - Executive and Administrative Departments); and 43 (Health).

As the Commission considered this material, some changes in organization were made. With the enactment of SB 581 (Chapter 342, Laws of 1972) a Department of Agriculture was established. Because of the bulk of statutory material pertaining to this Department, its general importance, and other factors dealing both with departmental administration and code organization, the Commission concluded that Agriculture should be a separate Article of the Code.

To replace it as Title 2 of the Natural Resources Article, we removed material dealing with the Maryland Geological Survey from Title 7, Mines and Mining, and made this material a new Title 2. The Survey has a number of functions, and they extend beyond mines and mining, hence it seemed appropriate to place this material elsewhere.

Initially, the statutory provisions dealing with wetlands and riparian rights were included in Title 8, Water and Water Resources. However, the Commission decided that the wetlands and riparian rights material was not entirely germane to the subject of water and water resources, and further concluded that it was of sufficient importance to place in a separate title. Thus, Title 9 is now Wetlands and Riparian Rights.

Former Title 9 was designated "Miscellaneous". As a general rule, the Commission attempts to avoid such a title since it is not particularly meaningful. Former Title 9 contained provisions pertaining to archeological resources, the Maryland Environmental Trust, and power plant siting. The archeological provisions have been placed in new Title 2, Maryland Geological Survey. The matters dealing with the Maryland Environmental Trust and with power plant siting, all of which really deal with the preservation of the environment, have been placed in a new Title 3, designated "Environmental Programs". We have thus been able to eliminate the original Miscellaneous Title.

Because of the reorganization of the Department of Natural Resources, accomplished by SB 735 (Chapter 348, Laws of 1972), the Department suggested that it might be desirable to split Title 5, Forests and Parks, into two titles, and to do likewise with Title 4, Fish and Wildlife.

The Commission carefully considered these proposals. It decided that the statutes dealing with forests and parks were so closely intertwined that it would not be feasible to split them. However, that is not the case with the fish and wildlife statutes, and these will now be presented to you as Title 4, "Fish", and Title 10, "Wildlife".

Thus, the new Article which will be presented to the Council may be summarized as follows:

Title 1 - Department of Natural Resources

Title 2 - Maryland Geological Survey

Title 3 - Environmental Programs

Title 4 - Fish

Title 5 - Forests and Parks

Title 6 - Gas and Oil

Title 7 - Mines and Mining

Title 8 - Water and Water Resources

Title 9 - Wetlands and Riparian Rights

Title 10 - Wildlife

The manner of preparation of this material might be of interest to the Legislative Council. Initially, the Commission's staff identified the statutes to be included in the Natural Resources Article. This was submitted in outline form to a subcommittee chaired by Roger D. Redden, Esq., of Baltimore, and consisting of Commissioners Philip Dorsey, John C. Eldridge, S. Ronald Ellison, C. Edward Jones, Henry R. Lord, James McSherry, Zelig Robinson, and Doris P. Scott. The subcommittee in turn examined the material and submitted its proposals to the full

Commission which reached the eventual decision as to the material to be included.

The same process was followed with respect to the drafts themselves. The staff prepared drafts, submitted them to the subcommittee, and then the subcommittee submitted amended drafts to the full Commission. After consideration by the full Commission, the staff placed the drafts in final form in accordance with the Commission's decisions. This procedure has been underway since January 1971. The work has progressed in conjunction with frequent consultation with the Department of Natural Resources and many of its sub-agencies.

III. FORM OF THE DRAFT.

Basically, the Natural Resources Article has been prepared in accordance with the organizational and stylistic guidelines contained in the Revisor's Manual. The numbering system is likewise that prescribed by the Manual. Under this system, the number to the left of the dash designates the title. The first digit or digits to the right of the dash designates the subtitle, and the final digits designate the section within the subtitle. A section would be cited: "Section 1-101, Natural Resources Article". An example of this numbering system in a recently-enacted bill is found in HB 439, now Chapter 349, Laws of 1972.

Each section is normally followed by a Revisor's Note. This note identifies the provision of the present Code upon which the proposed section is based, and explains the changes proposed and the reason for any changes.

The material is presented to the Legislative Council in ordinary bill form, with deletions from present law shown by brackets

and additions to present law shown by underscoring. Some of the attached drafts are rather rough in form, including hand-written inserts. This was done to expedite matters and to avoid excessive re-typing. It is assumed that the Council will make changes in the drafts, and final typing, perhaps utilizing the automated bill drafting system, will be accomplished when the Council has taken action.

If the Council approves the Natural Resources Article, the material will be prepared in clean bill form, with all language underscored or italicized, as was done in the case of HB 439. The bill will contain appropriate repealers of existing statutes. This procedure simplifies matters for the reader and will substantially reduce the size of what will in any event be a very long bill, since repealed language will not have to be reproduced.

IV. MATERIAL TO BE FURNISHED.

As indicated earlier in this Report, the drafts of Titles 2, 3, 4, 8, 9 and 10 still have to be furnished. These are presently under consideration by the Commission.

The Commission will also furnish computerized cross-reference tables when all titles have been submitted, and a table listing all criminal offenses contained in the Natural Resources Article.

Not included in the present drafts are changes required by 1972 legislation, particularly SB 735. The staff is preparing appropriate amendments so that 1972 legislation may be integrated into these drafts, and will submit these amendments to the Council during the course of its study of the material.

Finally, at the conclusion of the Council's study, the Commission staff will prepare an appropriate title and the necessary repealers and enacting clauses for the bill which will embody the Natural Resources Article.

V. DETAILED COMMENTS WITH RESPECT TO TITLES 1, 5, 6 and 7.

A. Title 1 - Department of Natural Resources.

This title establishes the structure and organization of the Department of Natural Resources. Prior to this project, this statutory material, which is found primarily in Article 41, had last been revised during the 1969 legislative session. The Commission attempted to make changes in both language and style, patterned after the executive department reorganization bills which were enacted in 1970. Here, our goal has been to achieve uniformity of language so that the statutes pertaining to all principle departments of State government would contain substantially similar provisions, absent a legislative policy decision to treat one department differently from other departments.

As is the case in the other titles, the great majority of changes proposed are stylistic in nature.

In this title, only one substantive change has been made; see Sec. 1-106. This section provides for an appeal to the Board of Review of the Department of Natural Resources by any person aggrieved by any decision, action, or non-action on the part of the Secretary or any agency or unit within the department. The Commission deleted ~~the~~ requirement that the complainant petition the person who originally decided the matter if that person is the

agency's chief executive officer. In this instance, the person aggrieved can directly petition the board of review. This change would eliminate the need for the complainant to petition the same person who initially decided adversely to him.

B. Title 5 - Forests and Parks.

Few policy questions are raised in the material dealing with Forests and Parks. Basically, the Commission has restructured the organization of the statutory material from that which presently exists in Article 66C. Since most of the changes are stylistic, only two areas deserve special consideration.

First, the Commission has decided to place the section dealing with "liability to aggrieved parties for cutting, burning, or injuring merchantable trees or timber" in this title rather than in the Damages title of the proposed Courts and Judicial Proceedings Article presently being prepared by the Commission. Section 5-509 provides that any person who unlawfully or negligently enters upon another's land without permission to cut or otherwise injure any merchantable tree or timber on the land is civilly liable to the party injured in an amount double the value of the trees or timber injured or destroyed. The Commission concluded that this was appropriate for retention in the Natural Resources Article, rather than for transfer to the Courts Article.

The second area ~~deals~~ with the Commission decision to provide a uniform penalty provision for this and other titles in the article. The Commission has proposed a classification system that changes most of the various present penalty provisions; careful legislative review of this treatment is required. As appears from examination of Section 5-1301, the penalty provisions for this title, the

Commission, with certain exceptions, has eliminated the plethora of individual and sometimes inconsistent and illogical penalty provisions found throughout the present statutes. Under the proposed draft, a first offender would be subject to the following maximum fine or prison sentence: \$500 fine and three months' imprisonment, or both. For a second or subsequent offense, the maximum fine would be \$1,000 and the maximum period of incarceration, one year. The Commission purposely decided not to propose minimum sentence provisions since for certain minor offenses the minimum might appear too stringent, thus tending to induce a not-guilty finding, while in other circumstances, the minimum would tend to become the maximum sentence imposed, or at least the standard sentence.

The uniform penalty approach makes for considerable simplification and has been followed in other areas, such as the Vehicle Laws; see Art. 66 1/2, Secs. 17-101 and 17-104. However, there are a few situations in which the nature of an offense requires a more severe penalty than the uniform one. We have attempted to preserve such offenses; see Section 5-604(a).

As noted earlier in the Report, the Commission will shortly furnish a table showing all penalties now provided with respect to Natural Resources offenses. This should assist the Council in deciding the appropriateness of the proposed uniform penalty provisions.

C. Title 6 - Gas and Oil

Like the other titles, most changes made here are stylistic in nature. However, several substantive changes should be noted for consideration.

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The Commission decided to restrict to the Secretary or his designee the power to certify departmental rules or orders to be admitted in evidence. The present law grants this power "to any member of the Department", which is both broad and vague; see Sec. 6-109(b).

Subtitle 3 (Storage of Natural or Artificial Gas and Petroleum Products in Prince George's County) presented an initial problem for the Commission since Article 66C, Sec. 695 (proposed Sec. 6-301) indicates that this statutory material was applicable only to Prince George's County (Chapter 791, Laws of 1957). However, Article 66C, Sec. 691 (proposed Sec. 6-306) provides that the statutory provisions are enforceable in any circuit court or in the Superior Court of Baltimore City. The Commission decided that since this subtitle is applicable only in Prince George's County, all legal actions should be initiated there, and not, for example, in the Superior Court of Baltimore City or in the circuit court for Washington County. Thus, a substantive change was made to restrict the filing of any actions to Prince George's County. Furthermore, the present language talks of a "proceeding in lieu of prerogative wit" [sic, "writ" obviously intended]. However, as the Revisor's Note following this section indicates, this action does not exist in Maryland jurisprudence. Since the Commission believed injunctive relief was appropriate, in contrast to the prerogative writs recognized at common law in this State, the section was changed to delete the reference to the "actions or proceedings in lieu of prerogative wit."

The Commission notes that in Sec. 6-110 the procedure for a re-hearing by a party adversely affected by any rule, regulation,

determination, or order of the department is different from the review procedure stated in Title 1. The question raised is whether this section should be deleted or whether it should remain as a specific exception for the department's review procedure. The decision is left to the Council.

The Commission notes that, according to Sec. 6-111 (a), an appeal from any departmental decision is to take precedence over any other type of civil action. The question raised is whether such an appeal should maintain this type priority. There are numerous similar provisions, such as Article 1A, Sec. 16. Are they necessary? And what happens when two "priority" appeals are before the Court? The decision is for the Council.

D. Title 7 - Mines and Mining.

Several substantive changes have been made in this title; however, the great majority of the changes are in style.

Sections 7-301 and 703 ("Examining authority defined" and "Examining authority to test applicants for different types of certificates of competency") contain new language. Sec. 7-301 defines the "examining authority" to mean either "the director of the bureau of mines or his designee" in connection with the procedure for the grant or suspension of a permit of competency or "the examining board" in connection with the procedure for a grant or suspension of first class mine foreman certificate of competency or fire-boss certificate of competency. This new term avoids the reference to either the director or examining board, depending on the particular certificate or permit in question.

In Sec. 7-309 ("Forged or counterfeit certificates"), the

Commission has made a substantive change by inserting reference to "permit of competency." As the language presently appears, any person who forges or counterfeits a certificate of competency is, upon conviction, guilty of a misdemeanor. Omitted from the section is the reference to a forged or counterfeit permit of competency. Therefore, the Commission inserted this phrase in the draft to make it a criminal offense to forge any type of certificate or permit of competency. This change has the approval of the director of the bureau.

In Sec. 7-310 ("Cancellation or suspension of certificate or permit of competency; obtaining new certificate or permit"), the Commission has made a substantive change by including a fire-boss certificate of competency within the provisions of this section. As the section presently appears, the procedure pertains only to the cancellation or suspension of a permit of competency or first-class mine foreman certificate. Upon the approval of the director of the bureau, the section has been completely redrafted to include reference to the fire-boss certificate. It should be noted that the fire-boss and first-class mine foreman certificates come within the meaning of the general phrase "certificate of competency."

Throughout subtitle 4, reference is made to "men working in the mine" or other similar language indicating the male gender. The Commission felt that the provisions of Article 1, Sec. 7 of the Code ("masculine includes the feminine unless the context is unreasonable") was not applicable to this type of statutory language which seems to refer expressly to males; see In re Maddox, 93 Md. 727, 50A, 487 (1901). It seems clear that both State and federal equal employment opportunity laws preclude, at least prima facie,

limiting all mine employment to men. Therefore, the word "workers" has been inserted for "men"; this in spite of the fact that there does not seem to be a rush of female applicants for work in coal mines.

Subtitle 6 deals with the "Abandoned Mine Drainage Control Act." The Commission decided not to codify any statutory provision dealing with specific issues of general obligation bonds, like those found presently in the language of this particular Act. This decision was based upon the fact that such provisions have little continuing statutory importance. Such is not the case with special obligation and revenue bonds. The general obligation bond statutes are to be repealed upon the enactment of a bill validating the general obligation bonds issued under the authority of the various session laws.

Title 7 also contains a uniform penalty provision in Sec. 7-701; please refer to the discussion of the concept in connection with Title 5, (Section C, supra).

Finally, Title 7 contains a vast amount of detailed regulations, especially in Subtitle 4. The Commission questions whether these should be in the statutes at all. We are proposing to the Department of Natural Resources that these provisions be embodied in departmental regulations, in which event, the statutes could be repealed, if the General Assembly so desires.

VI. CONCLUSIONS.

Within the next two months, the remainder of the Natural Resources material will be in the hands of the Council. However, if the Council wishes, study of the attached materials may begin immediately. The Commission staff will lend all assistance

possible. Staff attorney Curtis J. Karpel is specifically assigned to this project. It might also be desirable for the Council to ask the Department of Natural Resources to designate a specific liaison person.

No doubt the State Bar Association Committee on Environmental Law and groups such as the Chesapeake Bay Foundation will be interested in the Council's study of this Article. Each has been given some preliminary information on the subject.

A handwritten signature in black ink, appearing to read "W. H. Adkins, II", with a stylized flourish at the end.

William H. Adkins, II
Director

NATURAL RESOURCES ARTICLE

LIST OF TITLES

TITLE 1 - Department of Natural Resources

TITLE 2 - Maryland Geological Survey

TITLE 3 - Environmental Programs

TITLE 4 - Fish

TITLE 5 - Forests and Parks

TITLE 6 - Gas and Oil

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